

REMARKS

Upon entry of the claim amendments, Claims 1-6 will be all the claims pending in the application.

Claim 7 is canceled without prejudice or disclaimer. Further, Applicants reserve the right to file a continuation application directed to the subject matter of Claim 7.

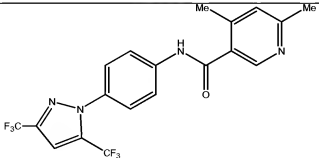
I. RESPONSE TO REJECTION UNDER 35 U.S.C. § 103

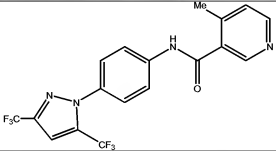
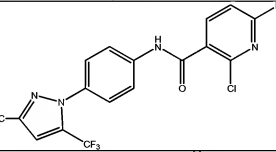
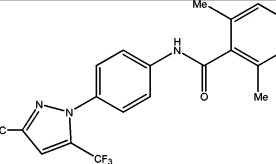
Referring to pages 2 and 3 of the final Office Action, Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of U.S. Patent No. 6,506,747 ("Betageri") and U.S. Patent No. 6,958,339 ("Kubota") in view of Haleblan et al. (J of Pharmaceutical Sciences, (1969), 58, pp 911-929), Chemical & Engineering News, Feb. 2003, Brittain et al. (Polymorphism in Pharmaceutical Solids, pages 1-2, 185), US Pharmacopia, 1995, pp 1843-1844, Muzaffar et al. (J. of Pharmacy (Lahore) 1979, 1(1), 59-66), Jain et al. (Indian Drugs, 1986, 23 (6), Taday et al. (J of Pharm. Sci, 92 (4), April 2003, 831-838) and Concise Encyclopedia Chemistry, page 872-873 (1993).

Applicants respectfully traverse. The presently claimed subject matter is unobvious over the applied combination of art.

At page 3 of the final Office Action, the examiner queries whether Applicants have "any factual support as to any unexpected or unobvious properties *vis-à-vis* the prior art compounds."

In response, Applicants submit the following table containing a comparison of pharmacological activities.

Compound	Structure	CRACC IC ₅₀ (μM)	Selectivity vs. VOC
A		0.30	33

<p>B (Ex. 112)</p>		<p>0.29</p>	<p>20</p>
<p>C (Ex. 6)</p>		<p>0.40</p>	<p>17</p>
<p>D</p>		<p>1.6</p>	<p>ND</p>

The table above compares the presently claimed compound (Compound A) and three types of comparative compounds in terms of CRACC inhibitory activity and selectivity. Compound B and Compound C are respectively the compounds of Ex. 112 and Ex. 6 disclosed in JP 2000-256358.¹ Compound D is a compound that differs from Compound A only at the position at which the methyl bond is substituted (not disclosed in the applied combination of art). “ND” in the table above means “not determined.”

The comparative compounds above are not compounds disclosed in the Kubota and Betageri references. However, it is well-settled that an applicant may compare the claimed subject matter with prior art that is closer to the claimed subject matter than the prior art relied

¹ JP 2000-256358 is of record by virtue of the Information Disclosure Statements submitted February 24, 2005, and January 22, 2007.

upon by the examiner. *See, e.g., In re Holladay*, 584 F.2d 384, 199 USPQ 516 (CCPA 1978); *Ex parte Humber*, 217 USPQ 265 (Bd. App. 1961). In the comparison table above, Applicants compare the presently claimed compound to comparative compounds having structures that are closer to the structure of the presently claimed compound than those structures found in the applied prior art. Accordingly, the evidence of unexpectedly superior results established by the comparison table above must be considered and given patentable weight and indeed serves to rebut the alleged *prima facie* case of obviousness.

In particular, from the results shown in the comparison table, it is apparent that Compound B and Compound C have lower VOC selectivity than Compound A, though the CRACC inhibitory activity itself is almost maintained.

In addition, the table shows that Compound D has decreased CRACC inhibitory activity. This means that the mere introduction of a methyl group is not sufficient and that the position of the substitution is also important.

Thus, it is apparent from the comparison table above that Compound A has particularly preferable activity in comparison to other compounds having similar structures, so that Compound A achieves unexpectedly superior effects in terms of CRACC inhibitory activity and its selectivity.

For the foregoing reason, as well as the reasons presented in the Response filed January 22, 2007, which are hereby incorporated by reference, Applicants request reconsideration and withdrawal of the present §103 rejection.

II. RESPONSE TO DOUBLE PATENTING REJECTION

Referring to page 9 of the final Office Action, Claims 1-7 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-8 of Kubota in view of Haleblan, Brittain, Chemical & Engineering News, Muzaffar, Jain, Taday, and Concise Encyclopedia Chemistry.

Applicants respectfully traverse. The presently claimed subject matter is not an obvious variation of the subject matter defined by Claims 1-8 of Kubota in view of the applied combination of art.

The analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 U.S.C. 103(a) rejection. *See*, MPEP § 804. Therefore, any objective indicia of nonobviousness is probative.

The comparison table set forth at Section I above contains probative objective indicia of nonobviousness. Therein, Applicants compare the presently claimed compound to comparative compounds having structures that are closer to the structure of the presently claimed compound than those structures found in the applied prior art. For the reasons presented at Section I above, the evidence of unexpectedly superior results established by the comparison table at Section I must be considered and given patentable weight and serves to rebut the present obviousness-type double patenting rejection.

Withdrawal of the present obviousness-type double patenting rejection is requested.

III. CONCLUSION

Reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the examiner feels may be best resolved through a personal or telephone interview, the examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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